122 FERC ¶ 61,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System Operator, Inc. — Docket No. ER08-209-000

ORDER ACCEPTING REVISED INTERCONNECTION AGREEMENT

(Issued January 11, 2008)

1. On November 13, 2007, Midwest Independent Transmission System Operator, Inc. (Midwest ISO), under section 205 of the Federal Power Act (FPA),[1] submitted a revised unexecuted large generator interconnection agreement (Revised LGIA) among itself, Prairie State Generating Company, LLC (Prairie State), and Ameren Services Company (Ameren).[2] This order accepts the Revised LGIA, which: (1) reflects a 150 MW increase in the capacity of the planned generating facility (Facility); and (2) incorporates the provisions of Midwest ISO's currently effective *pro forma* LGIA, including the 50-50 cost-sharing provisions for the $76.5 million in network upgrades associated with the total 1,650 megawatt (MW) output of the Facility.

Background

2. In 2002, Illinois Power filed an unexecuted interconnection agreement (Original LGIA) to interconnect Prairie State's 1,500 MW coal-fired, base-load Facility to Illinois Power's transmission and distribution system. The Commission ultimately accepted the Original LGIA as modified by the parties through settlement.[3] In 2004, to address

[1] 16 U.S.C. § 824d (2005).

[2] Midwest ISO states that it is aware that Ameren and Prairie State do not agree as to whether the Regional Expansion Criteria and Benefits (RECB) 50-50 cost-sharing provision in Midwest ISO's current *pro forma* LGIA should be applied to the Revised LGIA, as proposed in this filing. It states that the arguments made in support of the pricing provisions are made on behalf of Ameren acting as an agent for Illinois Power Company (Illinois Power) and Ameren Illinois Transmission Company (Ameren Transco) (collectively referred to as Ameren). Affidavits of Ameren employees are attached to the application in support of it.

[3] *Illinois Power Co.*, 101 FERC ¶ 61,117 (2002).

changes to the configuration of the interconnection, the acquisition of Illinois Power by Ameren Corporation, and the transfer of control of Illinois Power's transmission facilities to Midwest ISO, revisions to the Original LGIA were filed with the Commission. This LGIA (Existing LGIA) was conditionally accepted,[4] subject to modification to conform to Order No. 2003, the Commission's then new rule on interconnecting large generators.[5]

3. In Order No. 2003, the Commission required the higher of rolled-in or incremental pricing of network upgrades (so-called "or" pricing) for generation interconnections where the transmission provider is not a regional transmission organization or independent system operator (RTO/ISO). However, we allowed RTO/ISOs to propose participant funding (which includes charging the incremental costs of network upgrades in addition to a rolled-in embedded cost rate). Midwest ISO initially adopted the "or" pricing scheme in its Order No. 2003 compliance filing,[6] and the Existing LGIA incorporates such pricing. Midwest ISO, however, later adopted the RECB 50-50 cost-sharing, which is participant funding for at least 50 percent of network upgrade costs for interconnection agreements filed on or after February 5, 2006.[7]

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[4] *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,019, *order on reh'g and compliance*, 111 FERC ¶ 61,237, *order on reh'g*, 112 FERC ¶ 61,281 (2005).

[5] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

[6] *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,027, *order on reh'g*, 109 FERC ¶ 61,085 (2004).

[7] *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106 at P 46-72, *reh'g denied in pertinent part*, 117 FERC ¶ 61,241 at P 80-85 (2006) (RECB Order). Last year, the Commission rejected Midwest ISO's proposal to apply the 50-50 cost-sharing generically to existing LGIAs, including the Existing LGIA. The Commission found that Midwest ISO had not demonstrated that applying its new cost-sharing policy produced just and reasonable results; however, it found that Midwest ISO could amend individual existing LGIAs to adopt the 50-50 cost-sharing policy if Midwest ISO could show that 100 percent reimbursement would result in an "improper subsidy." *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,128 (2006), *reh'g denied*, 119 FERC ¶ 61,097 (2007).

Summary of Filing

4. Midwest ISO requests that the Commission accept the Revised LGIA, reflecting: (1) the 150 MW increase in the capacity of the Facility, necessitating revisions to the network upgrade facilities and their cost estimates and milestones in the Existing LGIA; (2) the addition of Ameren Transco as a transmission owner party; (3) the elimination of the requirement that Prairie State obtain the easements and rights-of-way to construct a 7.4 mile 345 kV line, a necessary network upgrade;[8] and (4) the incorporation of the provisions of Midwest ISO's currently effective *pro forma* LGIA, including the 50-50 cost-sharing provisions in section 11.4.1 of the *pro forma* LGIA for the $76.5 million in network upgrades associated with the total 1,650 MW output of the Facility.

5. Midwest ISO requests an effective date of February 5, 2006, for the revisions to section 11.4.1, the same effective date as allowed for the changes approved in the RECB Order, and an effective date of November 14, 2007, for the remaining changes. Midwest ISO argues that given these changes and the fact that the Facility will not be commercially operational until 2011, it is appropriate to treat the Revised LGIA as a new LGIA.

6. Citing Order No. 2003 and *New England Power Co.*, Midwest ISO argues that despite the fact that the Existing LGIA provides for 100 percent of the costs of the network upgrades required to interconnect Prairie State's planned Facility to be credited back to Prairie State, the RECB 50-50 cost-sharing should now apply because Prairie State's request to increase the capacity of its project from 1500 MW to 1650 MW requires a new LGIA.[9] It argues that Prairie State's request to add 150 MW of net output requires revisions to the network upgrades, cost estimates, construction schedules and other provisions as proposed in the Revised LGIA. It claims that this increase in net output will also require additional system impact studies and will require Midwest ISO to revise agreements with at least one other transmission owner.

7. Midwest ISO argues that since Prairie State's request to increase its capacity requires a new interconnection request, the new LGIA must be consistent with Midwest ISO's currently effective *pro forma* LGIA.[10] Therefore, the crediting provisions under section 11.4.1 of Midwest ISO's current *pro forma* LGIA, including the RECB 50-50 cost-sharing provision, should apply to the entire LGIA.

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[8] Midwest ISO states that if the requirement were to remain Prairie State's then a delay in the in-service date is likely to occur.

[9] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 4, n.5; *New England Power Co.*, 109 FERC ¶ 61,364, at P 13 (2004).

[10] *New England Power Co.*, 109 FERC ¶ 61,364 at P 13.

8. Alternatively, Midwest ISO maintains that it would be appropriate even in the absence of the increase in capacity of the Facility to apply the RECB pricing provision to Prairie State to prevent an improper subsidy. Midwest ISO argues that Ameren would not be constructing the network upgrades "but for" the need to interconnect Prairie State and, under basic rules of economics, payment for these network upgrades by any entity other than the generator is a subsidy. In addition, it argues that while nearly 90 percent of Prairie State's capacity is committed, those commitments are to loads primarily outside the Ameren Illinois pricing zone. Midwest ISO states that under the Existing LGIA, neither Prairie State nor the loads outside the Ameren Illinois zone that will be served by the Facility will pay any of the $76.5 million cost of the network upgrades required to interconnect the Facility. Instead, the cost of the upgrades will be paid for entirely by loads in the Ameren Illinois zone. Midwest ISO states that the Facility will cause the total annual revenue requirement for the Ameren Illinois zone to be approximately $11.6 million higher once the upgrades are placed into service. The 50-50 cost-sharing provisions would protect loads in the Ameren Illinois zone from improperly subsidizing the cost of the network upgrades.

Notice of Filing and Pleadings

9. Notice of Midwest ISO's filing was published in the *Federal Register*, 72 Fed. Reg. 65,717 (2007), with motions to intervene or protests due on or before December 4, 2007. The Illinois Commerce Commission filed a notice of intervention. Timely motions to intervene and protest were filed by Prairie State, Prairie Power, Inc., the Kentucky Municipal Power Agency, the Illinois Municipal Electric Agency, the Indiana Municipal Power Agency, and American Municipal Power-Ohio, Inc. Midwest ISO Stand-Alone Transmission Companies filed timely, joint and several motions to intervene, Midwest ISO Transmission Owners filed a motion to intervene, and Ameren filed a timely motion to intervene with comments in support of the filing. Midwest ISO and Ameren filed motions for leave to answer and answers to the protests. American Municipal Power-Ohio, Inc., Prairie State, and the Illinois Municipal Electric Agency filed answers to Midwest ISO's and Ameren's answers. Ameren, in turn, filed a further answer responding to these filings.

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[11] the notice of intervention and the timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[12] prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers from Midwest ISO, Ameren, Prairie State, the Illinois Municipal Electric

[11] 18 C.F.R. § 385.214 (2007).

[12] 18 C.F.R. § 385.213(a)(2) (2007).

Agency or American Municipal Power-Ohio, Inc. and will, therefore, reject them. We likewise reject Ameren's answer to these answers.

Interventions, Comments and Protests

11. Ameren supports Midwest ISO's filing and reiterates many of the same arguments. It states that the Commission has found in other cases that a substantial revision to an Existing LGIA requires that the parties adopt a new LGIA consistent with the *pro forma* LGIA in existence at the time of the revisions.[13] Further, it argues that allowing Prairie State to maintain the 100 percent rolled-in pricing in the Existing LGIA for the network upgrades would create an improper subsidy under Order No. 2003-B.[14]

12. In response to the argument that a new LGIA is required because of the increase in capacity of the Facility, Prairie State argues that its request to modify its Facility does not require an entirely new LGIA. According to Prairie State, the precedent cited by Midwest ISO to support the argument that an increase in the capacity of a generator requires a new LGIA is not on point. That precedent involved proposals to modify pre-Order No. 2003 agreements after Order No. 2003 became effective. Although it is willing to apply the 50-50 cost-sharing provision to the network upgrades associated with the increase in capacity of its Facility by 150 MW, Prairie State argues the cost-sharing provisions should not apply to the network upgrades in the Existing LGIA. It argues that changes required to update the Existing LGIA are not significant enough to treat the amendment as a new agreement, noting that the 150 MW increase in output correlates to an increase of only $30,000 in network upgrade costs, which is 0.04 percent of the $76.5 million of network upgrades for the entire project. Prairie State argues that the other changes are immaterial and requests that those changes be permitted through a discrete amendment to the Existing LGIA, without a completely new LGIA. It also argues that application of the RECB 50-50 cost-sharing provisions to the Facility's entire network upgrade costs, after it has begun construction of the Facility, would increase costs and violate its original expectations.

13. In response to Ameren's and Midwest ISO's second argument (that RECB 50-50 pricing should be approved to prevent an unfair subsidy), Prairie State argues that Ameren and Midwest ISO fail to satisfy the high burden established by the Commission to demonstrate that 100 percent reimbursement results in an improper subsidy. Prairie State argues that the network upgrades at issue here are by no means for the "sole use" of

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[13] *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,019 at P 21 (rejecting non-conforming LGIA and requiring the parties to adopt an LGIA based on the applicable *pro forma* LGIA); *order on reh'g,* 111 FERC ¶ 61,237 at P 15 (rejecting attempts to incorporate provisions of a prior LGIA for the Prairie State Facility).

[14] Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 54-7.

transmission customers outside the Ameren Illinois zone. It submits that transmission customers in the zone will benefit both directly and indirectly from the upgrades, irrespective of whether Prairie State delivers some of its output outside the zone. Prairie State notes that the Commission has recognized that the integrated transmission grid is a cohesive network whose expansion benefits all users of the grid.

14. Prairie State argues that the Revised LGIA should be rejected because it was filed by Midwest ISO in name only, in contravention of section 29.11 of the Existing LGIA and the general requirement for RTO/ISOs to act independently.[15] Instead, the filing has been made by Ameren, and is an attempt to evade the contractual provision limiting Ameren's right to seek modification to the Existing LGIA to filings under section 206 of the FPA. Prairie State notes that the arguments in support of the changed pricing provisions are made on behalf of Ameren. It requests that the Commission reject the filing as not reflecting the specified filing rights of the parties.

15. Several intervenors filed protests reiterating many of the same arguments raised by Prairie State. Further, American Municipal Power-Ohio. Inc., the Indiana Municipal Power Authority, the Illinois Municipal Electric Agency, and the Kentucky Municipal Power Authority, who have financial interests in the Facility, argue that, due to the late stage of this filing, application of the RECB 50-50 cost-sharing would be inequitable.

<u>Conclusion</u>

16. The Commission agrees with Midwest ISO and Ameren that Prairie State's request to increase the capacity of its planned Facility by 150 MW requires a new LGIA that must conform to Midwest ISO's current *pro forma* LGIA. Prairie State argues that the cases cited by Midwest ISO are irrelevant because they concern pre-Order No. 2003 IAs. We disagree. In Order No. 2003[16] and in company-specific cases,[17] the Commission has found that any increase in generation capacity from an existing generator requires a new LGIA conforming to the Transmission Provider's current *pro*

[15] Prairie State notes that under section 29.11 of the Existing LGIA, Midwest ISO, as a transmission provider, may file for revisions to the Existing LGIA unilaterally under section 205 of the FPA. Prairie State, as the interconnection customer, and Ameren, as the transmission owner, may file under section 206 of the FPA.

[16] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 4, n.5; Midwest Independent Transmission System Operator, Large Generator Interconnection Procedures (LGIP), sections 2.1, 11.1

[17] *New England Power Co.*, 109 FERC ¶ 61,364 at P 13; *Pacific Gas and Electric Co.*, 109 FERC ¶ 61,392 (2004); *Southern California Edison Co.*, 109 FERC ¶ 61,375, at P 10 (2004); *Jersey Central Power & Light Co.*, 110 FERC ¶ 61,273 (2005); *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,125, at P 3 (2006).

forma LGIA. That precedent is analogous to this case, which involves a generator not yet interconnected to the grid. An increase in generating capacity is generally a significant change (material modification) to an interconnection request that requires new studies and a new interconnection request.[18] Moreover, any such request can materially affect other interconnection customers in the queue. Thus, we are not persuaded that a new LGIA conforming to the Transmission Provider's current *pro forma* LGIA is not required here. Accordingly, we find that the Revised LGIA must conform to Midwest ISO's current *pro forma* LGIA, including the RECB 50-50 cost-sharing provisions, and we therefore accept the Revised LGIA.

17. We reject Prairie State's argument that its request to increase capacity by 150 MW is *de minimis* in relation to the overall project such that no new LGIA is required. Prairie State's request to increase the generating capacity of the planned Facility by ten percent cannot be characterized as *de minimis*.

18. We find no support for Prairie State's claim that the RECB 50-50 pricing provisions should apply only to the costs associated with its request to increase its capacity by 150 MW. The network upgrade pricing provisions in Midwest ISO's current *pro forma* LGIA apply to all network upgrades required to interconnect a generation facility, without distinguishing between upgrades that were initially covered under a pre-RECB LGIA and upgrades required for an increase in a facility's capacity after the RECB cost-sharing provisions were made effective.

19. The Commission also rejects Prairie State's contention that application of the RECB 50-50 cost-sharing provisions violates its contractual rights because it has relied on 100 percent crediting. It was Prairie State that requested the addition of capacity to its planned Facility, and it should have known that this added generation would require a new LGIA, which would have to conform to Midwest ISO's *pro forma* LGIA. Likewise, we disagree that Prairie State had a reasonable expectation that the cost allocation could not change. As Prairie State acknowledges, section 29.11 allows changes to be made to the Existing LGIA under section 205 of the FPA if Midwest ISO requests them.

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[18] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at Appendix C, section 1; Midwest ISO *pro forma* LGIP, section 1 (defining an interconnection request as a request "to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the . . . Transmission System"). *See also* Midwest ISO *pro forma* LGIP, section 4.4.3 (providing that an interconnection customer must proceed with a new interconnection request for a material modification to an existing interconnection request).

20. We note that not all changes to existing or planned generating facilities require new IAs.[19] Nevertheless, since Prairie State's request to add 150 MW of capacity to its planned Facility requires a new LGIA, we need not reach Prairie State's argument that the remaining changes to the Existing LGIA requested by Midwest ISO, such as the changes in the cost estimates and in-service date, do not by themselves require the execution of a new LGIA.

21. We disagree with Prairie State's and the intervenors' arguments that the Revised LGIA should be rejected for not properly being filed consistent with the specified filing rights of the parties. Section 29.11 of the Existing LGIA provides Midwest ISO explicit rights to file revisions to the agreement under section 205 of the FPA. Therefore, we dismiss the arguments that Midwest ISO improperly filed the Revised LGIA under section 205 of the FPA.

22. We need not address Midwest ISO's argument that application of 100 percent rolled-in pricing would result in an improper subsidy. Since we find above that Midwest ISO's RECB 50-50 cost-sharing provisions apply to the Revised LGIA, because it is a new LGIA, we conclude that Midwest ISO's improper subsidy argument is moot.

Effective Date

23. Midwest ISO requests an effective date of February 5, 2006, the effective date of the RECB Order, for the changes to the crediting provisions in section 11.4.1 of the Revised LGIA. Midwest ISO also requests waiver of the Commission's 60-day prior notice requirement specified in section 35.3 of the Commission's regulations[20] so that the effective date of those provisions coincides with the date such provisions in Midwest ISO's currently effective *pro forma* LGIA took effect.[21] Midwest ISO also requests an effective date of November 14, 2007, for the remaining changes.

24. Midwest ISO did not provide any reason to justify why the 60-day prior notice requirement should be waived for the changes to section 11.4.1 of the Revised LGIA. Further, we are not persuaded that waiver of the prior notice requirement is appropriate for the remaining changes due to the length of time prior to the Facility's commercial in-

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[19] In *New England Power Co.*, involving revised interconnections agreements reflecting a change in ownership of the generating facility, the Commission found that because there were no proposed increases in capacity or material modifications of the characteristics of the existing generating facilities, the proposed interconnection agreements did not involve new interconnection requests and therefore Order No. 2003 did not apply. *See New England Power Co.,* 109 FERC ¶ 61,364 at P 13.

[20] 18 C.F.R. § 35.3 (2007).

[21] RECB Order 114 FERC ¶ 61,106 at P 15, 115, 132.

service date. Accordingly, we will deny waiver of the prior notice requirement for lack of good cause shown. Midwest ISO is directed to file new tariff sheets with an effective date of January 12, 2008.[22]

The Commission orders:

(A) The Revised LGIA is hereby accepted, effective January 12, 2008, as discussed in the body of this order.

(B) Within 30 days of the date of this order, Midwest ISO must file a revised LGIA reflecting an effective date of January 12, 2008.

By the Commission. Commissioner Kelly dissenting with a separate statement attached.
Commissioner Moeller concurring in part with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[22] *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc.   Docket No. ER08-209-000

(Issued January 11, 2008)

KELLY, Commissioner, *dissenting:*

This order accepts a revised unexecuted large generator interconnection agreement (Revised LGIA) between Midwest Independent Transmission System Operator, Inc. (Midwest ISO), Prairie State Generating Company, LLC (Prairie State), and Ameren Services Company (Ameren). Among other things, the Revised LGIA applies a 50-50 cost-sharing mechanism to the entire output of Prairie State's planned facility, which is currently under construction. I do not agree with this order for the following reasons.

First, the order finds that the 50-50 cost-sharing mechanism should apply to Prairie State's entire planned facility instead of the cost sharing mechanism in the existing Interconnection Agreement on grounds that Prairie State's request to increase the facility's capacity by 150 MW to 1,650 MW is a material modification to its interconnection request and thereby requires a new LGIA that must conform to Midwest ISO's current *pro forma* LGIA. I disagree. Midwest ISO's *pro forma* Large Generator Interconnection Procedures (LGIP) defines material modification as "those modifications that have a material impact on the cost or timing of an Interconnection request with a later queue priority date."[1] Here, Midwest ISO has not shown that the proposed expansion to the planned facility will have a material impact on any party positioned below Prairie State in the interconnection queue.

Moreover, parties' actions do not indicate that they considered Prairie State's proposal to increase the capacity of its planned facility to be a material modification. Indeed, Prairie State has not been required to submit a new interconnection request nor has there been a change in its queue position. Further, section 4.4.3 of the Midwest ISO *pro forma* LGIP states that, when a modification is determined to be material, an interconnection customer "may then withdraw the proposed modification within two (2) Business Days or proceed with a new Interconnection Request for *such modification*." (Emphasis added.) Therefore, in this instance, even if Prairie State's proposed modification was deemed to be material, the Midwest ISO's *pro forma* LGIP suggests the

[1] Midwest ISO *pro forma* LGIP, section 1.

50-50 cost sharing mechanism would apply only to the 150 MW expansion of capacity rather than the entire output of the planned facility.

Finally, the result here saddles Prairie State with approximately $38 million of costs for seeking to expand capacity at its yet unfinished baseload facility. Prairie State is left with little alternative but to either cancel its planned expansion or delay the expansion until it has completed the previously proposed facility and recovered transmission credits. I would consider both to be inefficient outcomes.

For these reasons, I respectfully dissent from this order.

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Suedeen G. Kelly

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc. Docket No. ER08-209-000

(Issued January 11, 2008)

MOELLER, Commissioner *concurring in part*:

By the result of this case, it appears that if Prairie State had waited until the day after the new plant entered service to make its 150 MW uprate request, then it would have saved about $38 million in interconnection costs. Given the importance of additional generation and transmission resources in the region, the outcome of this order may send the wrong signal about the Commission's commitment to infrastructure development.

Nevertheless, I reluctantly concur as the result of this order is consistent with the Midwest ISO's pro forma LGIP, section 4.4.3, which provides that an interconnection customer must proceed with a new interconnection request for a material modification to an existing interconnection request. See P 16 of the order. The Midwest ISO and stakeholders should consider revising these procedures and standard agreements so that generators are not discouraged from upgrading capacity when those upgrades result in little added transmission costs.

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Philip D. Moeller
Commissioner